IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 598 of 1984
WITH
CROSS OBJECTION No. 43 of 2007
WITH
FIRST APPEAL No. 699 of 1984
WITH
CROSS OBJECTION No. 44 of 2007
WITH
FIRST APPEAL NO.888 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT - Appellant(s)
Versus
PATEL KARSAN RAIYA & 4 - Defendant(s)

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Appearance :
MS MAYA DESAI for GUJ.State Road Transport Corpn. in each of the matter.,
MR AR THACKER for Resp.No.1 in FA 598/84, X-Obj.No.43/07,
MR Shakeel A. Qureshi, for Resp.in FA Nos.699 & 999 of 1984 and X-Obj.No.44 of 2007,
Mr.Uday Bhatt for New India Insurance Co. in each of the matter.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 28/06/2007

COMMON JUDGMENT

1. Ms.Maya Desai, learned counsel for the Gujarat State Road Transport Corporation in each of the matter, Mr.A.R. Thakker, learned counsel for the respondent No.1 in First Appeal No.598 of 1984, Cross Objection No.43 of 2007, Mr.Shakeel A. Qureshi, learned counsel for the for the respondent in First Appeal No.699 of 1984, First Appeal No.999 of 1984 and Cross Objection No.44 of 2007. Mr.Uday R.Bhatt, learned counsel for the Insurance Company in each of the matter.
2. Gujarat State Road Transport Corporation, being aggrieved by the impugned Award dtd.30/7/1983 passed by the Motor Accident Claims Tribunal (Main), Kutch in Motor Accident Claim Petition Nos.117 and 96 of 1981 and 37 of 1982, is before this Court with a submission that the learned tribunal was unjustified in fixing the entire liability on the shoulder of the driver of the bus and the S.T. Corporation. It is also submitted that the award of the compensation suffers with the vice of

excessiveness.

3. To make the records straight, it must be mentioned that Patel Karshan Raiya – a passenger in Taxi bearing No.GTY-9515 had filed the claim in sum of Rs.3 Lacs, which was registered as Motor Accident Claim Petition No. 117 of 1981, the same was partly allowed and a sum of Rs.93,000=00 was awarded, being aggrieved by the said award, ST Corporation has filed First Appeal No.598 of 1984 and the claimant has filed Cross Objection seeking further amount of Rs.2,07,000=00.
4. Osmangani Mamad Thaba – driver of Taxi No.GTY-9515 had filed Claim Petition No.96 of 1981 claiming a sum of Rs.3 Lacs, the tribunal allowed compensation to the tune of Rs.87,000=00, ST Corporation, being aggrieved by by the said award, has filed First Appeal No.699 of 1984.
5. Samar Mamad Theba – owner of Taxi No.GTY-9515 had filed Claim Petition No.37 of 1982 claiming an amount of Rs.38,000=00 as compensation towards the loss to the taxi, the tribunal has awarded a sum of Rs.27,000=00, the ST Corporation has filed First Appeal No.888 of 1984 and the claimant had filed Cross Objection No.44 of 2007 seeking further amount of Rs.11,000=00.
6. Short facts necessary for disposal of the Appeals and

Cross Objections are that on the fateful day i.e. on 29/1/1989, ST Bus No.GRS-7502 was proceeding from Hajipur towards Bhuj, when it was proceeding towards Dhandwadi and trying to overtake a truck, it suddenly found that there was yet another truck in front of the first truck, to overtake the said truck, the driver came on extra right side of the road, width of which was 12 feet. After coming to the extreme right, the driver of the ST Bus found that a Taxi No.GTY-9515 was coming from the other direction, according to the claimants, the bus was driven rashly and negligently, the driver lost the control and he dashed his bus against oncoming taxi, which was on its correct side. The injured passenger – Patel Karsan Raiya has suffered certain injuries including fracture of Tibia Fibula, taxi driver Osmani Mamad Theba had suffered fracture of femur and also suffered other injuries, therefore, each of them claimed a sum of Rs.3 Lacs, owner of the taxi claimed Rs.38,000=00 submitting inter-alia that the taxi was at a total loss.

7. ST Corporation and the driver submitted that when the ST Bus driver wanted to overtake a truck, he suddenly found that the truck ahead of him was also chasing another truck. According to him, in the process of overtaking, he

had come towards more of his right and then he suddenly found that a taxi was coming from the other-side. According to the defence, the driver of the taxi was absolutely rash and negligent, he did not try to avoid dash and accident and bumped into the truck, they submitted that the driver as was in the process of overtaking, it could not be held that he was rash and negligent. They also denied the monetary liability in case the negligence was found on the part of the driver.

8. The learned tribunal, after receiving the pleadings, cast issues in each of the case and provided opportunity to the parties to lead evidence in support of their allegations and counter allegations. After hearing the parties, the learned tribunal held that there was no negligence on the part of Osmani Mamad Theba – taxi driver, it found that the bus driver was absolutely negligent. After appreciating the evidence, it awarded the amount in favour of claimants, as referred to above.

9. Ms.Desai, learned counsel for the ST Corporation, after taking me through the evidence, submitted that if on a road of 12 feet width, the bus driver was trying to overtake, then oncoming taxi driver should have tried to see the bus and should have avoided the accident. She

also submitted that if the taxi driver, after seeing oncoming bus did not stop, then the wrong was with the driver of the taxi. She submitted that the tribunal was absolutely unjustified in awarding the amount as referred to above, less appreciating that the injuries were not of serious nature and were to repair by passage of time.

10. Mr.A.R. Thakker, learned counsel for the claimant - Patel Karsan Raiya submitted that the tribunal did not appreciate the facts properly and also did not appreciate that Patel Karsan Raiyawas working as a Carpenter and was earning at least Rs.40 per day and if he could not stand for more than an hour, his future is absolutely finished. He also submits that the tribunal applied miser's approach in making the award towards pain, shock and suffering. He submitted that the facts, floating on the surface of the records, would clearly show that the driver of the bus did not exercise due care and caution when it was trying to overtake a truck on a road of 12 feet width.

11. Mr.Qureshi, learned counsel for the claimant – Sumar Mamad Theba submitted that the tribunal was unjustified in holding that the value of the taxi was less then Rs.30,000=00, when the evidence brought on the records clearly shows that the value of the taxi was

Rs.38,000=00 and the accident damaged the taxi into total loss.

12. From the evidence available on the records, it would clearly appear that the bus driver namely Jethabhai Shivaji Solanki was trying to overtake a truck. According to his version, the truck just ahead of the bus suddenly took a left turn and vanished on a side lane and thereafter, he could see that there was yet one truck, ahead of the bus. According to his defence and the statements, when he was trying to overtake the second truck and when he came to his extreme right, he suddenly found that a taxi was coming from the other-side. According to him, he did not commit any wrong, because, he was already in process of overtaking a truck and therefore, it was not possible for him to stop. The facts would clearly show that after the first truck had taken a left turn, the bus driver did not exercise due care and caution. If on a road which is 12 feet wide, a truck with a width of 8 feet is plying, then, only 4 feet pakka road is left and any vehicle which is trying to overtake such a truck, is not required to suddenly come to the right side of the truck, but would be required to exercise due care and caution, by taking a small turn to check that

whether some other vehicle is coming or not from the other-side. In the present case, it appears that the bus driver did not exercise that due care and caution and in a zeal to overtake the second truck, came to extreme right and after finding that a taxi was coming from the other-side, he took extreme right turn, went to the kachcha flank and thereafter, dashed against the taxi. If the spot or the scene is created by the court, it would clearly appear that the bus driver went to extreme right and dashed against the oncoming taxi. Principle of *res ipsa loquitur* would fully apply to the facts of the case. In the opinion of this court, the tribunal was not unjustified in relying upon the statements of inmates of taxi and relying upon the spot map of the scene. The tribunal was also justified in holding the driver guilty and further holding that there was no contributory negligence on the part of Osmani Mamad Theba – taxi driver.

13. Taking me through the evidence, Ms.Desai submitted that looking to the nature of the injuries, the tribunal was unjustified in making the award of Rs.93,000=00 in favour of Patel Karsan Raiya, at the same time, Mr.Thakker, learned counsel for the claimant – respondent submitted that the tribunal was unjustified in

rejecting the rest of the claim.

14.From the evidence of the Doctor, it would appear that Patel Karsan Raiya had suffered fracture of tibia fibula of the right leg. The learned tribunal had made an award for pain, shock and suffering and further holding that his future career is not absolutely finished. The tribunal also held that the claimant could not prove that his earnign was Rs.2000=00 every month. The tribunal also found that in support of the claim of the claimant that he was earning Rs.2000=00 per month at Qatar, no concrete evidence could be brought on record. After going through the evidence available on the records, I am unable to hold that the findings recorded by the learned tribunal was wrong.

15.It is not the case of the claimant – Patel Karsan Raiya that within short time, he was again to go to Gulf country or Qatar or he had some contract in his hands entitling him to go to Gulf country and earn more. The tribunal thought, and reasonably in the opinion of this Court, that the income of the said claimant could be assessed at Rs.40=00 per day, it accordingly held that the monthly income would be Rs.1200=00 and the loss of the future income, looking to the permanent partial disablement

would be Rs.400=00 per month. According to Ms.Desai, learned counsel for the ST Corporation, the future loss is assessed on the higher side, while, according to Mr.Thakker, learned counsel for the claimant, it is on the lower side.

16. It is not the case of the claimant Patel Karsan Raiya that he was permanently employed somewhere or he was getting salary. His submission is that he was employed on daily basis by any person. In such a case, specially when few days are kept of by Carpenter, then the Court would be justified in presuming that the said claimant could get work for 25 days a month, if he was lucky, otherwise, he could get work for 20 days a month. If he was to get Rs.40=00 per day for 25 days, then his monthly income would have been Rs.1000=00, out of that, the tribunal had awarded future loss at the rate of Rs.400=00 per month. Though Mr. Thakker, submits that as on today, Carpenter is paid Rs.200=00 to Rs.250=00 per day, therefore, this Court should take into consideration the future prospects.

17. In the opinion of this Court, If the Index Number of the year 1981-82 is to be compared with the Index Number of the year 2007, then one would find that the value of

the money has decreased and the value of Rs.250=00 per day earned in these days, is less than Rs.40=00 which he earned in those days. Price of almost every item has increased. The future prospects of a particular person are not to be seen in air, but some positive evidence was required to be brought on the records. In the present case, barring a submission of Mr.Thakker that what could be the future prospects, nothing has been brought on records.

18. Agreeing with the findings recorded by the learned tribunal, I hold that the tribunal was not unjust in awarding a sum of Rs.93,000=00 in favour of Patel Karsan Raiya.

19. So far as the case of Osmani Mamad Theba is concerned, according to the Doctor, he had suffered fracture of femur bone. The Doctor has said that the injury would stand repaired, despite shortening of the leg, but nobody has said that such an injury would make Osmani Mamad Theba absolutely unfit from driving a vehicle. In his case the tribunal has awarded different amount under different heads and after taking into consideration, the future loss of the income, has assessed total compensation at sum of Rs.87,000=00. That amount, in the opinion of this

Court, is not suffering with vice of excessiveness.

20. So far as the case of Sumar Mamad Theba – owner of Taxi is concerned, the Tribunal has found that the value of the taxi, on the date of the accident, could not be more than Rs.25,000=00. The tribunal has looked into the statements of Batuk – Panch, who prepared the Panchnama and assessed loss at Rs.32,000=00. The taxi was of 1965 model and the accident took place in the year 1981, the taxi was used for more than 16 years. The tribunal, in the opinion of this Court, was not unjustified in holding that the loss to the taxi was to the extent of Rs.27,000=00 only.

21. In view of the discussion aforesaid, I hold that neither the Appeals nor the Cross Objections merit. The Appeals and the Cross Objections are dismissed. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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